

REMARKS

This Office Action Response is being submitted in reply to the Office Action dated October 4, 2006. Claims 1, 7, 11, 19, and 25 have been amended herein, and claims 2, 4-6, and 24 have been canceled. Claims 1, 3, 7-23, and 25-27 are presented herein for examination.

Claim Rejections – 35 USC §103

Claims 1-4, 10-12, 14, 17-21, 23 & 25-27 were rejected under 35 USC § 103(a) as being unpatentable over Pellon (5,392,042) in view of Khlat et al (6,678,340). Claims 5-6, 15 & 22 were rejected under 35 USC § 103(a) as being unpatentable over Pellon (5,392,042) in view of Khlat et al (6,678,340) and further in view of Sklar (Sklar, B; Digital Communications, Fundamentals and Applications; Chapter 3, Page 128-129; Copyright 1988, Prentice Hall). Claims 7, 9, 13 & 16 were rejected under 35 USC § 103(a) as being unpatentable over Pellon (5,392,042) in view of Khlat et al (6,678,340) and further in view of Sklar (Sklar, B; Digital Communications, Fundamentals and Applications; Chapter 3, Page 128-129; Copyright 1988, Prentice Hall) and in further view of Ko et al. (6,577,674).

Independent claims 1, 11, 19, and 25 have been amended herein to recite:

wherein the signal generator comprises an amplitude phase shift key modulator

as recited in claims 1 and 11;

amplitude shift key modulating the digital output signal to provide the feedback signal

as recited in claims 19 and 25. In support of the § 103 rejection the Examiner stated:

Sklar discloses that an ASK modulator which functions as an On-Off keying modulator (Page 129, Fig. 3.5 @). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention that Sklar teaches implementing an ASK modulator as a switching device and this is analogous to the switching device as described in Pellon in view of Khlat, thus satisfying the limitation of the claim.

The rejection is hereby respectfully traversed. First, it is not clear what the “switching device” is that the Examiner is referring to as being described in Pellon in view of Khlat. The Examiner has not shown that Pellon or Khlat teaches or discloses such a “switching device”. The Examiner is kindly invited to particularly point out such a “switching device” or to otherwise withdraw the rejection. Second, the Examiner’s assertion provides no teaching or suggestion for modifying the combination of Pellon and Khlat to arrive at the combination as claimed in the claims as amended herein. Specifically, there is no teaching or suggestion to implement an ASK modulator in the combination of Pellon and Khlat to arrive at the subject matter as recited in claims 1, 11, 19, or 25 as amended herein. Since Pellon and Khlat do not appear to disclose any “switching device”, nor any suggestion to implement such a “switching device” as an ASK modulator, the Examiner has not established the required motivation to combine. The Examiner is kindly invited to point out where such motivation may be found or to otherwise withdraw the rejection. Third, the Examiner has provided no reasonable expectation of success of any such combination of Pellon and Khlat with an ASK modulator as taught by Sklar. The Examiner is kindly reminded that:

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not in applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). MPEP § 2143.

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). MPEP § 2141.01 (III). (Emphasis in original).

Therefore, since the Examiner has not established that the prior art suggests the desirability of the claimed combination, or the expectation of success, the Examiner has not set forth a *prima facie* obviousness rejection. Therefore the rejection should be withdrawn.

CONCLUSION

In view of the amendments and the remarks above, Assignee submits that this application is in condition for allowance. Entry of the amendments and allowance of the application are respectfully solicited. The Examiner is kindly invited to telephone the undersigned at (303) 495-3700 to facilitate allowance of the application.

Respectfully submitted,

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Date April 3, 2007

By /Kenneth J. Cool – Reg. No. 40,570/

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 3 day of April, 2007.

Name



Signature

